United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
	)	
and	)	**Docket No. 14-354**
	)	**Issued: September 2, 2014**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Seattle, WA, Employer	)	
	)	

Appearances:
John Eiler Goodwin, Esq., for the appellant
Ashkea Herron McAllister, Esq., for the Director

Oral Argument June 11, 2014

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 2, 2013 appellant, through her attorney, filed a timely appeal from a June 5, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on November 2, 2012.

At oral argument, appellant's attorney asserted that OWCP did not meet its burden of proof to terminate his wage-loss compensation because the opinion of Dr. Sanders Chai, an attending Board-certified occupational medicine physician, on which the termination was based, was not sufficiently rationalized. Counsel further asserted that a retear of a torn anterior cruciate ligament should have been accepted.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 30, 2006 appellant, then a 33-year-old medical records technician, submitted a traumatic injury claim alleging that on March 22, 2006 she injured her right knee when she rose up from her chair and tripped on another chair that was in her office. On September 12, 2005 she had nonwork-related right knee surgery for a torn anterior cruciate ligament. OWCP accepted a tear of the right medial meniscus.[2] Appellant was also in a nonwork-related motor vehicle accident in 2006.

Appellant stopped work in January 2007 and did not return. On June 15, 2007 she underwent arthroscopic repair of the right medial meniscus. At that time, the right anterior cruciate ligament was also evaluated and sutures were removed.

In a subsidiary claim, OWCP accepted major depressive episode, severe and post-traumatic stress disorder.[3]

On June 11, 2009 Dr. David Butler, an attending Board-certified family practitioner, advised that appellant was seen in follow-up of the March 22, 2006 employment injury. He noted that she reported that the knee recently began swelling partway through a three-hour "for the cure" walk. A therapist also noted that appellant might be able to return to soccer with a sports brace.

OWCP referred appellant to Dr. Larry R. Pedegana, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 21, 2009 report, Dr. Pedegana provided findings on examination. He diagnosed a right torn meniscus with repair, more probable than not related to the March 22, 2006 work injury and preexisting anterior cruciate ligament reconstruction and partial lateral meniscectomy unrelated to the employment injury. Dr. Pedegana advised that appellant was fully recovered from the effects of the March 22, 2006 work injury and had no work restrictions regarding activity involving the right knee. Appellant had an ongoing psychiatric disability.

In an April 28, 2010 treatment note, Sarah Minor, Ph.D., a clinical psychologist, noted that appellant tore her Achilles tendon at home and had also been in another motor vehicle accident.

Dr. Sanders Chai, Board-certified in occupational medicine, provided a treatment note on May 8, 2012. He noted that appellant was last seen on July 1, 2008 and had been lost to follow-up until that day. Appellant's right knee was stable after a slight flare that occurred during a hike several years previously and she had injured her Achilles tendon. Dr. Chai noted that she had recently renovated her house, repaired a chimney and pulled carpeting on her own,

[2] A May 3, 2006 magnetic resonance imaging (MRI) scan of the right knee demonstrated a small tear of the medial meniscus and a suspected retear of the repaired anterior cruciate ligament. Drs. Joseph E. Noonan, Jr., and Richard E. Hall, Board-certified orthopedic surgeons, provided second opinion evaluations on September 11, 2006 and September 17, 2007 respectively.

[3] The knee claim was adjudicated by OWCP under file number xxxxxx650 and the stress claim under file number xxxxxx399. These claims were combined by OWCP.

walked two miles three times a week, rode her bicycle five to 10 miles and took no pain medication. While appellant reported problems with repetitive kneeling and squatting, her squat, gait, neurological and vascular examinations were within normal limits. Dr. Chai noted a symmetric appearance of the right knee, upper or lower leg and ankle with no effusion or tenderness along the medial joint line. Range of motion was full. Patella tracking was symmetric and tendons were intact. Drop and McMurray's tests were negative. Appellant had no instability. Dr. Chai concluded that she was at maximum medical improvement and had no work restrictions. On an attached work capacity evaluation, he advised that appellant could return to full duty at her usual job regarding her knee claim. In a May 9, 2012 report, Dr. Chai noted that in July 2008 he determined that, she was at maximum medical improvement as to her right knee and his examination the previous day affirmed this opinion. He concluded:

> "There are no objective findings that support any need for further treatment under the claim. Thus there is no causal relationship to be established at this time with regard to any injury to the right knee. Claimant and I reviewed the above and she agrees there are no work restrictions that are necessary under this claim. I am submitting a Form CA-17 to reflect this."

By letter dated May 22, 2012, OWCP proposed to terminate appellant's compensation benefits on the grounds that she no longer had any disability or residuals due to the accepted right knee condition. Counsel disagreed with the proposed termination. He submitted a June 8, 2012 duty status report from Dr. Sukriti Singhal, Board-certified in occupational medicine, who provided restrictions on walking, limited to six hours daily and lifting limited to five pounds continuously and 25 pounds intermittently.

In a decision dated July 2, 2012, OWCP finalized the proposed termination, effective July 1, 2012.

On July 23, 2012 appellant requested a hearing. In a September 19, 2012 decision, OWCP's hearing representative reversed the termination finding that counsel was not provided a copy of the July 2, 2012 decision.

In a November 2, 2012 decision, OWCP terminated appellant's medical and wage-loss compensation, effective that day. Appellant was paid compensation for the period July 1 through November 2, 2012.

Appellant requested a hearing on November 15, 2012. A December 5, 2012 MRI scan of the right knee demonstrated a posterior horn medial meniscal tear, probable chronic partial-thickness tear of the mid anterior cruciate ligament graft with adjacent fibrotic changes, evolving degenerative changes and mild superficial chondromalacia of the patellar cartilage. In a January 11, 2013 report, Dr. Michael J. Franceschina, a Board-certified osteopath specializing in orthopedic surgery, noted a history that on March 22, 2006 appellant tripped over a chair at work, injuring her right knee and had right knee surgery in 2006 and 2007. He reported her complaint of continued pain and noted that she had not been able to play soccer for several years. Dr. Franceschina provided findings on physical examination, reviewed the MRI scan study and diagnosed right knee degenerative arthritis and post-traumatic arthritis, probable attenuation and

mild degeneration of the anterior cruciate ligament graft, posterior horn medial meniscus tear and chondromalacia patella.

In treatment notes dated November 13, 2012 to February 8, 2013, Dr. Michael S. McManus, Board-certified in occupational medicine, reported a history that appellant tripped on a chair at work when she was rushing to an emergency situation. He noted her complaints of constant pain and swelling of the right knee and provided physical examination findings. Dr. McManus diagnosed a right knee strain or sprain with tears of the medial and lateral menisci and partial tear of the anterior cruciate ligament, right saphenous neuropathy, chondromalacia of the right knee, compartment syndrome of the lower extremity, unstable knee, status-post arthroscopic repair of medial and lateral meniscectomies and chondroplasties, post-traumatic arthritis of the right knee and status-post-traumatic rupture of the right Achilles tendon. In duty status reports dated November 13, 2012 to February 8, 2013, he advised that appellant could return to work with restrictions of lifting 40 pounds intermittently for two hours a day. Climbing, bending and stooping were limited to two hours a day.

A hearing was held on March 22, 2013. Appellant described her job duties and indicated that her knee still bothered her. Lisa Wabinga, an employing establishment human resource manager, testified regarding appellant's job duties.

By decision dated June 5, 2013, OWCP's hearing representative affirmed the November 15, 2012 decision. She found that the medical evidence from Dr. Chai was sufficient to terminate appellant's compensation benefits for the accepted right knee condition.[4]

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[5] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits on November 2, 2012. OWCP accepted that appellant sustained a tear of the right medial meniscus due to a March 22, 2006 traumatic injury. Appellant stopped work in January 2007 and was placed on the periodic compensation rolls.

The medical evidence relevant to the November 2, 2012 termination includes the May 8, 2012 report by Dr. Chai, an attending physician, who noted that appellant, was last seen

[4] The hearing representative also noted that appellant had filed a claim for wage-loss compensation under claim file number xxxxxx399 that was under development by OWCP.

[5] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[6] *Id.*

on July 1, 2008 and that her right knee condition was stable after a slight flare that occurred during a hike several years previously. Dr. Chai noted that she had renovated her house, repaired a chimney and pulled carpeting on her own, that she walked two miles three times a week, rode her bicycle five to 10 miles and took no pain medication. He noted that appellant reported difficulty with repetitive kneeling and squatting, but that her squat, gait, neurological and vascular examinations were normal. Dr. Chai noted a symmetric appearance of the right knee, upper and lower leg and ankle with no effusion and tenderness along the medial joint line. Appellant had full knee range of motion, symmetric patella tracking, intact tendons and negative drop and McMurray's tests. She had no instability. Dr. Chai concluded that appellant was at maximum medical improvement and could return to full duty at her usual job with no restrictions regarding her knee. On May 9, 2012 he noted that he concluded in July 2008 that she was at maximum medical improvement regarding her knee and that his examination on May 8, 2012 confirmed this opinion, stating, that there were no objective findings that supported any need for further treatment with regards to any injury to the right knee.

Appellant submitted a June 8, 2012 report from Dr. Singhal who provided physical restrictions. In a January 11, 2013 report, Dr. Franceschina noted her report that she tripped over a chair at work and injured her right knee and that she complained of continued right knee pain. He diagnosed degenerative and post-traumatic arthritis of the right knee and mild degeneration of the graft, posterior horn medial meniscus tear and chondromalacia patella. In reports from November 13, 2012 to February 8, 2013, Dr. McManus also reported a history that appellant injured her right knee at work and had complaints of constant pain and swelling. He diagnosed right knee strain or sprain with tears of the medial and lateral menisci and partial tear of the anterior cruciate ligament, right saphenous neuropathy, chondromalacia of the right knee, compartment syndrome of the lower extremity, unstable knee, status-post arthroscopic repair of medial and lateral meniscectomies and chondroplasties, post-traumatic arthritis of the right knee and status-post traumatic rupture of the right Achilles tendon. Dr. McManus advised that appellant could return to restricted duty. None of these physicians, however, related their physical findings or diagnoses to the March 22, 2006 employment injury.

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report.[7] The Board finds that OWCP properly determined that the weight of the medical opinion evidence rested with the opinion of Dr. Chai, who fully discussed appellant's physical findings with regards to her right knee, noted that she performed activities such as renovating her home, bicycling and walking and that she took no pain medicine. Dr. Chai concluded that appellant could return to work with no restrictions. As he provided a rationalized explanation for his opinion that she had no residuals of the March 22, 2006 employment injury, OWCP met its burden of proof to terminate her compensation benefits on November 2, 2012.

[7] *Michael S. Mina*, 57 ECAB 379 (2006).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on November 2, 2012.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board